

SANFORD LAW OFFICE, PLLC
Jo Anne Sanford, Attorney at Law

July 26, 2022

Ms. A. Shonta Dunston, Chief Clerk
North Carolina Utilities Commission
4325 Mail Service Center
Raleigh, North Carolina 27699-4325

Via Electronic Delivery

Re: Election by Carolina Water Service, Inc. of North Carolina to
Establish Rate Base for Carteret County Water System Under Fair
Value Methodology Authorized by N.C.G.S. § 62-133.1A
NCUC Docket No. W-354, Sub 398

Dear Ms. Dunston:

Attached for filing please find Carolina Water Service, Inc. of North Carolina's ("CWSNC" or "Company") Application to establish rate base for the Carteret County Water System, filed pursuant to N.C.G.S. § 62-133.1A and Commission Rule R7-41.

The application brings a case of first impression to the Commission, and it consists of three primary parts: a narrative Application, the testimony of CWSNC State President Donald H. Denton III, and the NCUC Form Application FV1. The latter contains a number of exhibits, including appraisals submitted by three utilities valuation experts, all qualified by experience to perform these valuations and all registered with and recognized by the NCUC pursuant to N.C.G.S. § 62-133.1A(b)(1).

By companion filing to be made within the next two weeks, CWSNC will file an application for a Certificate of Public Convenience and Necessity in Docket No. W-354 Sub 399, requesting authority to serve the territory currently served by Carteret County Water System, should the application in this Sub 398 docket be approved and the closing take place.

As always, we thank you and your staff for your assistance; please feel free to contact me if there are questions or if additional information is required.

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P.O. Box 28085, Raleigh NC 27611-8085

919.210.4900

OFFICIAL COPY

JUL 26 2022

Electronically Submitted

/s/Jo Anne Sanford

North Carolina State Bar No. 6831

Attorney for Carolina Water Service, Inc. of
North Carolina, Inc.

- c: Lucy Edmondson, Chief Counsel, Public Staff
Gina Holt, Manager, Legal Division, Natural Gas, Water, Sewer,
Telephone, & Transportation Sections, Public Staff
Charles Junis, Director of Water, Sewer, and Telephone Division, Public
Staff
John Little, Staff Attorney, Public Staff

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. W-354, SUB 398

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of)	
Election by Carolina Water Service, Inc. of)	APPLICATION BY CAROLINA
North Carolina to Establish Rate Base for)	WATER SERVICE, INC. OF
Carteret County Water System Under Fair)	NORTH CAROLINA TO
Value Methodology Authorized by)	DETERMINE RATE BASE
N.C.G.S. § 62-133.1A)	VALUE UPON ACQUISITION
)	OF CARTERET COUNTY
)	WATER SYSTEM

NOW COMES Carolina Water Service, Inc. of North Carolina (“CWSNC” or “Company”), by and through counsel and pursuant to the provisions of N.C.G.S. § 62-133.1A and North Carolina Utilities Commission (“Commission” or “NCUC”) Rule R7-41 and elects a “fair value” determination of rate base with respect to its pending acquisition of the Carteret County water system. CWSNC requests Commission approval of the “fair value” determination contained herein, and of the subsequent calculation of rate base value of these assets that is derived by use of the “fair value” mechanism, authorized under N.C.G.S. § 62-133.1A. In support of this request---which is a case of first impression under this statute in North Carolina---the Company says the following:

STATUTORY AUTHORIZATION AND RULES

- (1) N.C.G.S. § 62-133.1A, titled “fair value determination of government-owned water and wastewater systems,” was adopted as Session Law 2018-51 and became law in June 2018.

(See Attachment 1)

- (2) The statute was designed to facilitate the transfer of water and wastewater systems which are owned by governmental providers, to ownership and operation by regulated public utilities, in the event there are willing public utilities who wish to purchase and willing local governmental utilities who wish to sell. The valuation of assets for the purpose of determining the rate base in these types of transactions has historically been an impediment to the market. This is because the “original cost” valuation is generally dramatically below the price required to purchase the asset. Thus, the regulated utility would be tied to a rate base which essentially equaled the original cost, without regard to how much it had paid. N.C.G.S. § 62-133.1A establishes a fair system for addressing the valuation issue, under the oversight of the Commission and with the active participation of the Public Staff.

- (3) As directed by the statute at subsection (f), the Commission adopted rules to implement the section; they are NCUC Rules R7-41 (water) and R10-28 (sewer).

(See Attachment 2 for convenience re. R7-41.)

- (4) The Commission's Fair Value Form Application (FV1), established in December 2020 and captioned Application for Determination of Fair Value of Utility Assets Pursuant to N.C.G.S. § 62-133.1.A, is in the Appendices to Rules R7-41 and R10-28. A completed version of it is included in this Application and is referred to as the "Commission Fair Value Form Application."

PARTIES AND CONTRACT TO PURCHASE

- (5) CWSNC is a water (and wastewater) public utility, as defined by N.C.G.S. § 62-3(23)a.2, and the Carteret County Water System is a "Local Government Utility" under Rule R7-41(b)(1), because it is owned by the County. Thus, Carteret County is a qualifying seller under the "fair value" mechanism set forth in N.C.G.S. § 62-133.1A.
- (6) CWSNC and Carteret County have entered into an agreement to, respectively, purchase and sell the existing County water system. The purchase contract, dated October 18, 2021, is attached as Exhibits 6(a) and 6(b) to the Commission Fair Value Form Application.
- (7) Pursuant to N.C.G.S. § 62-133.1A, CWSNC herein elects to establish rate base by using the "fair value" of the utility property instead of original cost, in the acquisition of this existing water system, currently owned by Carteret County.

DETERMINATION OF FAIR VALUE

- (8) Appraisals. This Application presents support for the “fair value” of the Carteret County water system, based upon three separate appraisals conducted by accredited, impartial valuation experts chosen from a list established by the Commission, as required by N.C.G.S. § 62-133.1A(b)(1).
- One appraiser, Hartman Consultants, LLC, represents CWSNC, the public utility acquiring the system.
 - The second appraiser, Gannett Fleming, represents Carteret County, the governmental utility selling the system.
 - The third appraiser, NewGen Strategies & Solutions, represents the Public Staff.
 - N.C.G.S. § 62-133.1A(b)(1)b requires that each appraiser shall determine “fair value” in compliance with the uniform standards of professional appraisal practice, employing cost, market, and income approaches to assessment of value. CWSNC hereby submits the valuations of these three appraisers, as required by the statute and the rule. All three of these valuation experts are recognized as Utility Valuation Experts under N.C.G.S. § 62-133.1A(b) and Commission Rule R7-41(c)
- (9) Engineering Assessment. CWSNC and Carteret County, as the acquiring public utility and selling governmental utility, jointly retained a licensed engineer to conduct an assessment of the tangible assets of the system to

be acquired. The engineering firm is Draper Aden Associates, and the assessment is dated December 2021, revised March 2022. The assessment was used by the three appraisers in determining fair value, and the engineer's report is found in Exhibits 5(a), 5(b), and 5(c) to the Commission Fair Value Form Application, which is part of this filing. See *N.C.G.S. § 62-133.1A(b)(2)*.

- (10) Reasonable Fees. CWSNC seeks to include in the cost of the County system the reasonable fees paid to valuation experts and to the engineering firm, as well as reasonable transaction and closing costs incurred by it in the acquisition. These fees---known and estimated---are provided in Attachment 3 to this Application. See *N.C.G.S. § 62-133.1A(b)(3)*. CWSNC requests permission to update the estimates at the time of the hearing, and to further update for all known and measurable expenses at the time in which rates are established for this system in the Company's next general rate case.

DETERMINATION OF RATE BASE

- (11) CWSNC seeks a determination of rate base to be reflected in its next general rate case for ratemaking purposes, after the pending rate case application currently under consideration in Docket No. W-354 Sub 400. The rate base requested is the lesser of the purchase price negotiated

between the parties to the sale (\$9,500,000), or the “fair value”, plus the fees and costs authorized in N.C.G.S. § 62-133.1A(b)(3).¹

**REQUIRED ELEMENTS OF APPLICATION,
PER N.C.G.S. § 62-133.1A(c)**

The core filing requirements for this Application are contained in and attached to the Commission Fair Value Form Application (Attachment B) as Exhibits to that form. They are enumerated in N.C.G.S. § 62-133.1A(c) and include:

- (1) copies of the valuations performed by the three appraisers;
- (2) description of any deficiencies identified by the engineering assessment, and a five-year plan for infrastructure investment;
- (3) projected rate impact on the seller’s customers for the next five years;
- (4) averaging of the appraisers’ valuation, which shall constitute fair value under the statute;
- (5) the assessment of tangible assets performed by the licensed professional engineer;
- (6) the contract of sale;
- (7) the estimated reasonable valuation fees and transaction and closing costs incurred by the acquiring public utility (which CWSNC requests to update to the close of hearing); and

¹ The Company requests that the fees and expenses be updated for actuals and then-current estimates as of the close of hearing.

(8) a tariff, including rates equal to the rates of the selling utility, which will be the rates charged to the customers upon and after acquisition by CWSNC (unless otherwise ordered by the Commission for good cause shown).

Additionally, consistent with the terms of the Commission Fair Value Form Application, CWSNC submits the testimony of Donald H. Denton III, the Company's North Carolina State President. This testimony provides a narrative explanation of the object and purposes sought by the Application and describes how the public interest is served by the proposed acquisition. This testimony is verified as required by the Rules and is a part of this filing, designated as Attachment A.

WHEREUPON CWSNC hereby requests that the Commission approve this Application for determination of fair value and thence of the rate base value for CWSNC of the Carteret County assets which the Company seeks to acquire.

Respectfully submitted this 25th day of July, 2022.

Electronically Submitted
/s/ Jo Anne Sanford

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**ATTORNEY FOR CAROLINA WATER
SERVICE, INC. OF NORTH
CAROLINA**

§ 62-133.1A. Fair value determination of government-owned water and wastewater systems.

(a) Election. – A water or wastewater public utility, as defined by G.S. 62-3(23)a.2., may elect to establish rate base by using the fair value of the utility property instead of original cost when acquiring an existing water or wastewater system owned by a municipality or county or an authority or district established under Chapter 162A of the General Statutes.

(b) Determination of Fair Value. –

(1) The fair value of a system to be acquired shall be based on three separate appraisals conducted by accredited, impartial valuation experts chosen from a list to be established by the Commission. The following shall apply to the valuation:

- a. One appraiser shall represent the public utility acquiring the system, another appraiser shall represent the utility selling the system, and another appraiser shall represent the Public Staff of the Commission.
- b. Each appraiser shall determine fair value in compliance with the uniform standards of professional appraisal practice, employing cost, market, and income approaches to assessment of value.
- c. Fair value, for ratemaking purposes under G.S. 62-133, shall be the average of the three appraisals provided for by this subsection.
- d. The original source of funding for all or any portions of the water and sewer assets being acquired is not relevant to an evaluation of fair value.

(2) The acquiring public utility and selling utility shall jointly retain a licensed engineer to conduct an assessment of the tangible assets of the system to be acquired, and the assessment shall be used by the three appraisers in determining fair value.

(3) Reasonable fees, as determined by the Commission, paid to utility valuation experts, may be included in the cost of the acquired system, in addition to reasonable transaction and closing costs incurred by the acquiring public utility.

(4) The rate base value of the acquired system, which shall be reflected in the acquiring public utility's next general rate case for ratemaking purposes, shall be the lesser of the purchase price negotiated between the parties to the sale or the fair value plus the fees and costs authorized in subdivision (3) of this subsection.

(5) The normal rules of depreciation shall begin to apply against the rate base value upon purchase of the system by the acquiring public utility.

(c) An application to the Commission for a determination of the rate base value of the system to be acquired shall contain all of the following:

- (1) Copies of the valuations performed by the appraisers, as provided in subdivision (1) of subsection (b) of this section.
- (2) Any deficiencies identified by the engineering assessment conducted pursuant to subdivision (2) of subsection (b) of this section and a five-year plan for prudent and necessary infrastructure improvements by the acquiring entity.
- (3) Projected rate impact for the selling entity's customers for the next five years.
- (4) The averaging of the appraisers' valuations, which shall constitute fair value for purposes of this section.
- (5) The assessment of tangible assets performed by a licensed professional engineer, as provided in subdivision (2) of subsection (b) of this section.
- (6) The contract of sale.

- (7) The estimated valuation fees and transaction and closing costs incurred by the acquiring public utility.
- (8) A tariff, including rates equal to the rates of the selling utility. The selling utility's rates shall be the rates charged to the customers of the acquiring public utility until the acquiring public utility's next general rate case, unless otherwise ordered by the Commission for good cause shown.

(d) Final Order. – If the application meets all the requirements of subsection (c) of this section, the Commission shall issue its final order approving or denying the application within six months of the date on which the application was filed. An order approving an application shall determine the rate base value of the acquired property for ratemaking purposes in a manner consistent with the provisions of this section.

(e) Commission's Authority. – The Commission shall retain its authority under Chapter 62 of the General Statutes to set rates for the acquired system in future rate cases, and shall have the discretion to classify the acquired system as a separate entity for ratemaking purposes, consistent with the public interest. If the Commission finds that the average of the appraisals will not result in a reasonable fair value, the Commission may adjust the fair value as it deems appropriate and in the public interest.

(f) The Commission shall adopt rules to implement this section. (2018-51, s. 2; 2021-23, s. 25.)

R7-41 PROCEDURE FOR DETERMINING FAIR VALUE AND ESTABLISHING RATE BASE FOR ACQUISITIONS OF GOVERNMENT-OWNED WATER SYSTEMS

(a) Scope of Rule.—This Rule provides the procedural and filing requirements for the determination of the value of utility property for ratemaking purposes applicable when a utility acquires an existing water system owned by a municipality or county, or an authority or district established under Chapter 162A of the General Statutes, and the utility makes an election pursuant to G.S. 62-133.1A(a) to establish its rate base associated with the acquisition by using the fair value of the acquired property instead of original cost.

(b) Definitions.

- (1) "Local Government Utility" means an existing water system owned by a municipality, county, or an authority or district established under Chapter 162A of the General Statutes.
- (2) "Rate Division" means a separate rate schedule of a water utility for one or more established customer service areas.
- (3) "Utility Valuation Expert" means a person qualified as an expert in the appraisal of utility plant whose proficiency is demonstrated and established pursuant to subsection (c) of this Rule.
- (4) "Professional Engineer" means a person who has been duly licensed by the North Carolina State Board of Examiners for Engineers and Surveyors established by Chapter 89C of the General Statutes, including those persons who may be licensed by comity or endorsement.
- (5) "Asset Purchase Agreement" means a contract for the sale of an existing water system between a water utility, as buyer, and a Local Government Utility, as seller, which is to be valued for purposes of rate base. The Asset Purchase Agreement shall reflect the price negotiated between the Public Utility purchaser and the Local Government Utility.

(c) Establishment of List of Utility Valuation Experts.—The Commission shall establish a generic proceeding in Docket No. W-100, Sub 60A for the purpose of creating and maintaining a list of accredited, impartial Utility Valuation Experts as required pursuant to G.S. 62-133.1A(b). A person seeking to become a Utility Valuation Expert shall apply to the Commission by furnishing the following:

- (1) a demonstration of the person's education and experience specific to providing valuations and appraisals of utility plant, as differentiated from other types of appraisals, such as for real estate;
- (2) a written attestation that a Utility Valuation Expert owes a fiduciary duty to provide a thorough, objective, and fair valuation;
- (3) a demonstration of financial and technical fitness, such as through production of professional licenses, technical certifications, and names of current or past clients with a description of dates and types of services provided;
- (4) a demonstration of adequate utility valuation and appraisal experience to support the Commission's decision to consider these persons or entities as experts in this field;
- (5) a statement that the Utility Valuation Expert will make use of the assessment of the tangible assets of the system to be acquired, which assessment shall be from a Professional Engineer jointly retained by the utility and the Local Government Utility and make use of the Water and Wastewater Fair Value Engineering Assessment Form included in the Appendix to this Chapter as a template for the engineer's assessment;
- (6) a statement that the Utility Valuation Expert will comply with the requirements of G.S. 62-133.1A in conducting their appraisal, including that the Utility Valuation Expert shall appraise the subject property in compliance with the uniform standards of professional appraisal practice, employing cost, market, and income approaches to assessment of value; and
- (7) any other information as required by the Commission.

(d) Application for Election to Establish Rate Base Using Fair Value.—A water utility may elect to establish rate base using the fair value of the utility property acquired from a Local Government Utility by filing with the Commission an application pursuant to G.S. 62-133.1A and this Rule. The form of the application shall be as provided in the Appendix to this Chapter. In addition to providing the information required pursuant to G.S. 62-133.1A in the completed application form, the application shall contain a narrative explanation of the object and purposes desired by the application and how the public interest is served by the acquisition, along with any other information required by the Commission. The application shall be accompanied by the testimony of the acquiring utility's president or another person employed by the utility who is personally familiar with the contents thereof and who verifies that the contents of the application are true and accurate.

(e) Procedure upon receipt of Application.—Contemporaneous with the filing of an application with the Commission pursuant to G.S. 62-133.1A and this Rule, the utility shall serve a copy of the application on the Public Staff. The Public Staff shall review the application and no later than ten days after the application is filed, the Public

Staff shall file with the Commission and serve upon the applicant a recommendation regarding whether the application is complete or identify any deficiencies noted. If the Commission determines that the application is incomplete as submitted, the utility will be required to file the omitted information.

Once the Commission determines that the application is complete, the Commission will promptly issue an order establishing procedural deadlines and discovery guidelines and requiring the utility to provide notice of the pending application to the customers of the Local Government Utility. If the Commission receives significant written complaints against the application, then the Commission will issue a further order setting the application for hearing. The Commission will endeavor to schedule the hearings to be held within three months of the filing of the application to facilitate issuance of a final order within six months of the filing of a completed application as directed pursuant to G.S. 62-133.1A(d).

(f) Rate Division Assignment.—Pursuant to G.S. 62-133.1A(c)(8), service to customers in the service area of the Local Government Utility shall be under a tariff that includes rates equal to the rates of the selling utility until the utility's next general rate case, unless otherwise ordered by the Commission for good cause shown. An application filed pursuant to G.S. 62-133.1A and this Rule shall include a proposed tariff that reflects such rates and a statement as to whether the utility intends to propose in its next general rate case that the service area of the Local Government Utility be integrated into an existing Rate Division of the acquiring utility or be established as a new Rate Division. A determination as to whether the service area of the Local Government Utility should be integrated into an existing Rate Division or established as a new Rate Division shall be preserved for the Commission's consideration in the utility's next general rate case.

(g) Final Order on Application.—Consistent with the direction provided in G.S. 62-133.1A(d), the Commission will endeavor to issue a final order on the application filed pursuant to G.S. 62-133.1A and this Rule within six months of the filing of a completed application. The Commission's final order will resolve all substantive issues and, if the Commission determines that the Application should be approved, the Commission will specifically determine the rate base value of the acquired property for rate-making purposes in a manner consistent with G.S. 62-133.1A and the provisions of this Rule, as follows:

- (1) Determination of Rate Base.—The rate base value of the acquired system shall be the lesser of the purchase price reflected in the Asset Purchase Agreement or the average of the three appraisals as required pursuant to G.S. 62-133.1A (b)(1), unless the Commission specifically finds that the average of the appraisals will not result in a reasonable fair value, in which case the Commission may adjust the fair value pursuant to G.S. 62-133.1A(e) as it deems appropriate and in the public interest;
- (2) Certain Costs Eligible to be Included in Rate Base Value.—Consistent with G.S. 62-133.1A(b), the Commission will allow the inclusion of the costs of the engineering assessment, transaction and closing costs incurred by the utility, and fees paid to Utility Valuation Experts, including fees paid by the acquiring utility to a Utility Valuation Expert that represents the Public Staff, in the rate base value of the acquired system upon a finding that those costs were reasonably and prudently incurred;
- (3) Depreciation.—The Commission will require the utility to apply the normal rules of depreciation against the rate base value from the date of the purchase of the system; and
- (4) Tariffs.—The Commission will approve the establishment of a new tariff for the provision of water service to customers in the acquired service territory, which shall also determine whether the acquired service territory will be treated as a separate Rate Division.

(h) Burden of Proof.—The utility shall have the burden of proof regarding all aspects of the proceeding on an application filed pursuant to G.S. 62-133.1A and this Rule, and for demonstrating that the acquisition of the Local Government Utility is in the public interest.

(i) Payment of Fees for Public Staff Utility Valuation Expert.—The acquiring utility shall pay the fees of the Utility Valuation Expert that represents the Public Staff whether the Commission approves the application, denies the application, or if the acquiring utility withdraws the application.

(NCUC Docket No. W-100, Sub 60, 12/30/2020.)

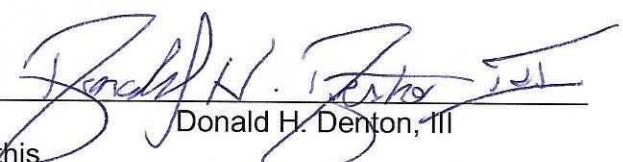
CWSNC Fair Value Application
W-354, Sub 398
Attachment 3

Carteret County Water System Acquisition Expenses

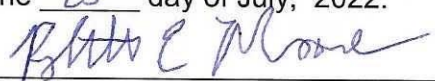
<u>Supplier</u>	<u>Service</u>	<u>Cost + Estimates</u>
Hartman Consultants	CWSNC Valuation	\$38,000.00
John Tanum, Attorney at Law	Title / Easement Verifications	\$5,100.00
Mill Creek Environmental	Phase 1 Environmental Study	\$10,675.00
Poyner Spruill	Real Estate Legal Consultation	\$1,416.30
Sanford Law Office, PLLC	Legal	\$30,567.50
Stroud Engineering	Surveys	\$24,719.90
NewGen Strategies & Solutions	NC Public Staff Valuation	\$29,467.72
Carteret County	1/2 Engineering Assesment	TBD

VERIFICATION

Donald H. Denton, III, being duly sworn, deposes and says: that he is the State President of Carolina Water Service, Inc. of North Carolina; that he is familiar with the facts set out by CWSNC in its **APPLICATION TO DETERMINE RATE BASE VALUE UPON ACQUISITION OF CARTERET COUNTY WATER SYSTEM** in Docket No. W-354 Sub 398; that he has read the foregoing Application and knows the contents thereof; and that the same is true of his knowledge except as to those matters stated therein on information and belief, and as to those he believes them to be true.


Donald H. Denton, III

Sworn to and subscribed before me this
the 25 day of July, 2022.


Notary Public

ROBERT E MOORE
NOTARY PUBLIC
MECKLENBURG COUNTY
NORTH CAROLINA
MY COMMISSION EXPIRES 03-05-2025

My Commission Expires: 03-05-2025

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **APPLICATION FOR DETERMINATION OF RATE BASE VALUE OF THE CARTERET COUNTY WATER SYSTEM, VIA THE FAIR VALUE METHODOLOGY AUTHORIZED BY N.C.G.S. § 62-133.1A**, filed by Carolina Water Service, Inc. of North Carolina in Docket No. W-354, Sub 398, has been served on the Public Staff, North Carolina Utilities Commission, by hand-delivery or electronic transmission to Lucy Edmondson, Chief Counsel.

This the 26th day of July, 2022.

**Attorney for Carolina Water Service,
Inc. of North Carolina**

Electronically Submitted
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